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Federal Communications Commission
Office of the Secretary

APPEAL

In the Matter of)

Notification of Commitment Adjustment Letters)
by USAC Schools and Libraries Division to the)
Stevens Point Area Public School District,)
Stevens Point, Wisconsin (BEN 133245))

CC Docket No. 02-6

REQUEST FOR REVIEW AND WAIVER OF DECISIONS OF THE
UNIVERSAL SERVICE ADMINISTRATOR

May 16, 2007

Appellant: STEVENS POINT AREA PUBLIC SCHOOL DISTRICT

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The Stevens Point Area Public School District is appealing the three (3) Notification of Commitment Adjustment Letters (COMAD) received by the district on March 22, 2007. Pertinent information on these letters is listed in the table below. All three (3) letters relate to Internet access provided by WiscNet (SPIN, 143004351), Wisconsin's not-for-profit Internet Service Provider serving the K-20 education community. The Stevens Point Area Public School District Billed Entity Number (BEN) is 133245

Year	470#	471#	FRN	COMAD fund request amounts
2001	98762000029818 1	226120	521210	\$8,910.00
2002	57435000037435 1	294243	753267	\$15,288.00
2003	80130000043562 1	344180	927094	\$15,482.17

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Total COMAD funds to be recovered				\$39,680.17

The Stevens Point Area Public School Uistrict is appealing directly to the FCC because other public entities with a similar situation in Wisconsin have appealed to the USAC and have been denied funding.

Core Issue and Stevens Point Area Public School District Request to the Commission
USAC has issued the three (3) COMAD letters claiming that there were improper service provider involvement with the district's competitive bidding process and in preparation of Form 470's. Scott Colantonio (former Stevens Point Area Pubic School District technology director), was listed as the contact on the Form 470's in question. Mr. Colantonio has served on the WiscNet board from 2001 to the present. Because of his board membership, USAC claims the Form 470's were tainted and it is seeking full reimbursement of its 2001-2003 funding commitments which were included on any Form 471 application listing a funding request for WiscNet.. The facts concerning the district's relationship with WiscNet, as explained in detail below, establish that, there is no conflict, of interest or impropriety with the district's competitive procurement for Internet access. Accordingly, we respectfully ask the Commission to cancel the USAC COMAD letters or, alternatively, grant the Stevens Point Area Public School District a waiver of any applicable regulations. (See "Action requested section below.)

Background and Rebuttal of USAC COMAD Claim

We are well aware of the Commission's concerns about waste, fraud and abuse in the E-rate program and that a fair and open bidding process is a key factor in helping to guard against these concerns. According to FCC precedent, service providers cannot be involved with the preparation or submission of a Form 470, or with any steps in a competitive procurement prior to an award tying made to the successful proposer. The crux of USAC's basis for the COMADs is its conclusion that because Mr. Colantonio is on the WiscNet board and because he also was the contact person for a Form 470, there was somehow improper service provider involvement or a conflict of interest due to his dual roles. USAC failed to appreciate or understand, however, that Mr. Colantonio's election to the Board of WiscNet was by virtue of his employment as a Technology Director from a Wisconsin School District. Indeed, Mr. Colantonio is not, and never has been a WiscNet employee. He has no ownership interest in WiscNet and does not benefit financially in any way from a decision to choose WiscNet as the district's Internet provider.¹ Clearly, Mr. Colantonio's role in WiscNet had no bearing whatsoever in the district's selection of the successful vendor for Internet access service. The Stevens Point Area Public School District denies that Mr. Colantonio's service on the WiscNet board tainted the Form 470 or the competitive bidding process. Under all circumstances he represented the Stevens Point Area Public School District and not any provider in the 470 bidding process. Our unique connectivity out to WiscNet through our local university (University of Wisconsin Stevens Point) has allowed us access to WiscNet for the years in question including all the years following for a far less cost than any other company could provide.

¹ We note that, several members of the USAC board are employees of providers that benefit directly from the E-rate program. We think Mr. Wilson's service on the WiscNet board is more removed from potential conflicts than the service of these providers on the USAC Board.

Paragraph ten in the Commission's *Mastermind* decision states that an applicant violates bidding requirements when it "surrenders control of the bidding process to a service provider that participates in that bidding process."² The Stevens Point Area Public School District did not surrender the bidding process to a provider. In fact, WiscNet was not even aware that the district, filed a Form 470 seeking Internet services. Also in paragraph ten the Commission states its concern that "other bidders may not receive from the contact person information of the same type and quality that, the contact person retains for its own use as a bidder." All bidders for any services would have received the same information.

Further in the *Mastermind* decision, the Commission expresses concern that a prospective bidder may not participate in the bidding process if it believes that another bidder is serving as the contact person.,' First, to make this assumption ignores the well known fact, which the Commission itself has recognized³, that many E-rate applicants nationwide never receive any bids for services posted on their Form 470s. Second, any bidder would have to know that Mr. Colantonio served on the WiscNet board, knowledge of which by the hypothetical bidder is highly doubtful. Third, in the unlikely chance a provider knew of Mr. Colantonio's service on the WiscNet board, the provider would then have to assume that it would not receive the same information as any other provider. While not happening during 2001-2003, we believe it germane to note the following regarding competitive bids: The Oshkosh (WI) Area School District and CESA 10 also have employees on the WiscNet board, and like Stevens Point, they also received a COMAD letter from USAC in March 2007⁵. During the current (2006) funding year, the school district (Oshkosh) did receive Internet service bids from AT&T and Charter Communications. *Both providers' bids were more than twice as high as the Internet costs bid by WiscNet.* If these two providers knew that Oshkosh schools had an employee on the WiscNet board, it certainly did not discourage them from bidding for the district's Internet service.

From a broader perspective, WiscNet is a not-for-profit, membership-owned cooperative. WiscNet was founded by UW Madison and 23 other public and private Wisconsin Colleges and Universities in 1989. All of WiscNet business operations are handled by UW Madison. The check we write for our Internet service through WiscNet is made out to UW Madison. WiscNet provides Internet services to public libraries, K-12 schools and academic institutions in Wisconsin. Other states and regions have similar organizations. As the Internet and all its varied applications continue to have an ever increasing impact on educating our children, we need to encourage more, not less, K-20 collaboration. In this regard, we find it encouraging that

² Request for Review of the Decision of the Universal Service Administrator by Mastermind Internet Services, Inc., CC Docket No. 96-45, Order, 16 FCC Rcd 4028, (released May 23, 2000).

³ *Id.* At paragraph 11.

⁴ *Winston-Salem/Forsyth County School District*, SLD No. 302305, CC Docket No. 96-45, (released December 8, 2003). Paragraph 14: "Its [the school district's] decision to enter into a contract with the one bidder is no different than the thousands of other applicants who receive either *no bids*, or *only one bid*, in response to a FCC Form 470 posting." [Emphasis added.]

⁵ The Oshkosh (WI) Area School District and CESA 10 will be also be submitting an appeal to the Commission. If the Commission finds that WiscNet board membership taints the 470 bid process, then, at least for 2006, the Oshkosh schools and CESA 10 would have been forced to select another Internet provider at a significantly higher cost than WiscNet and thus likely to violate FCC regulations requiring that "price must be the primary factor in considering bids." Paragraph 50 in the *Ysleta Order*, CC Docket No. 96-45, FCC 03-313, (released December 8, 2003).

just in the past two months the FCC has been asking the state research and education network community (including WiscNet) how the E-rate program can help foster better partnerships between K-12 and higher education. Unfortunately—to put it mildly—these three COMAD letters threaten one of the best examples of such a partnership. Allowing USAC to recover the discounts to the Stevens Point Area Public School District will have a very chilling effect on the positive, collaborative relationship WiscNet-type organizations throughout the country have built between the K-12 and higher education communities. To preserve their E-rate eligibility, K-12 member institutions will forbid their staff from serving in the governance of their state research and education networks, to the detriment of the entire education community.

Action requested

Based on the above information, The Stevens Point Area Public School District respectfully asks the Commission to take one of the following actions, listed in our priority order.

1. The Commission determines that there has been no violation of the competitive bidding regulations and cancels USAC's four COMAD letters.
2. The Commission determines that there was a competitive bidding violation but waives its relevant rules because "there is no evidence at this time in the records that the petitioner engaged in activity to defraud or abuse the E-rate program." And furthermore, the Commission finds that "the policy underlying these rules, therefore, was not compromised due to Petitioner's errors." In granting a waiver, it cancels USAC's four COMAD letters.
3. The Commission determines that there was a competitive bidding violation, but waives its relevant rules because it serves the educational interests of the Stevens Point Area Public School District schools, teachers and students it services.⁸ And the "applicants have demonstrated that rigid compliance with the application procedures does not further the purposes of section 254(h) or serve the public interest."⁹ Furthermore, any commitment adjustment will not benefit any other Internet provider. In granting a waiver, it cancels USAC's four COMAD letters.
4. The Commission determines that there was a competitive bidding violation and it does not waive its regulations. If the Commission takes this action, the Stevens Point Area Public

⁶ paragraph 9. *Requests for Review of Decisions of the Universal Service Administrator by Academy of Excellence, Phoenix, AZ, Et Al.*, Schools and Libraries Universal Service Support Mechanism. Granted the Requests for Review (Dkt No. 02-6). Action by the Commission. Adopted: 04/18/2007 by Order (FCC No. 07-60, released May 9, 2007).

⁷ Paragraph 9. *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, Et Al.*, Schools and Libraries Universal Service Support Mechanism. Granted the Requests for Review and/or Requests for Waiver (Dkt No. 02-6). Action by the Commission. Adopted: 04/18/2007 by Order (FCC No. 07-63), (released May 9, 2007).

⁸ *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School*, CC Docket No. 02-6, File Nos. SLD-487170, et al. (released May 19, 2006). Paragraph 2, the Commission recognizes that under the Communications Act of 1934, as amended, it is "helping to ensure that eligible schools and libraries actually obtain access to discounted telecommunications and information services."

⁹ *Id.* At paragraph 11.

School District requests a substantial reduction in the amount owed, in accord with language in the FCC's *Fifth Order*.¹⁰

We hope the Commission will select any of the first three actions listed above and thus grant our appeal and rescind the COMAD letters. Schools districts in Wisconsin have been under state imposed budget restrictions for the past ten years. Needing to pay back in excess of \$39,000 will mean less services going to support the schools and students in our district. If you have any questions, please do not hesitate to contact us. Thank you in advance for your consideration of this request.

Sincerely,

Sincerely

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¹⁰ *Fifth Report and Order*. CC Docket No. 02-6 (released August 13, 2004). Paragraph 31, "Finally, we decline to implement a rule generally requiring *full recovery* [emphasis added] when a pattern of violations is discovered, recognizing the punitive nature of such a rule."